Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1576

ERNEST E. CUENI,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

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ERNEST E. CUENI,

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STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Petitioner, ERNEST E. CUENI, JR., prays that a Writ of Certiorari be issued to review the order of the District Court of Appeal, First District, State of Florida, entered in the above-captioned case on July 18, 1974, Petition for Rehearing denied September 10, 1974, and Petition for Writ of Certiorari in the Supreme Court of the State of Florida denied March 13, 1975.

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OPINION BELOW

The Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, entered a judgment on the 11th day of June, A.D., 1973, Petitioner was found not guilty of the murder of Forest L. Babcock but guilty of assault with intent to commit a felony on Floridene Cueni, after being charged and tried on an indictment for murder in the first degree and assault with intent to commit a felony. Said judgment is printed herein at Page 1, Appendix A.

Petitioner timely filed his Notice of Appeal on October 23, 1973. On May 14, 1974, Petitioner filed an Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal and for Extension of Time for Filing Record and Briefs, in the District Court of Appeal, First District of Florida. The Appellate Court of the State of Florida, First District, rendered its order granting Petitioner extension of time for filing record and briefs but denied Petitioner's Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal, which opinion is printed herein at Page 1, Appendix B. This is reported at 303 So.2d 411. Petitioner's Motion for Rehearing was denied September 10, 1974, and Petitioner filed his Petition for Writ of Certiorari in the Supreme Court of the State of Florida which Petition was denied March 13, 1975, and is printed herein at Page 1, Appendix C. The denial of Petitioner's Writ of Certiorari is reported at 310. So.2d 738.

STATEMENT OF JURISDICTION

The Appellate Court of the State of Florida, First District, entered its opinion denying Petitioner's Motion

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for Declaration of Indigence of Appellant to Provide Transcript for Appeal on July 18, 1974.

Petition for Rehearing was timely filed and denied by the Appellate Court, First District, State of Florida on September 10, 1974.

The Petitioner's attorney on October 18, 1974, filed a Petition for Writ of Certiorari with the Supreme Court of the State of Florida.

The Supreme Court of Florida, on March 13, 1975, entered its order denying Petitioner's Writ.

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

The Federal Question raised in this Appeal is:

Is a demand by an agent of the State of Florida, to-wit; the Official Court Reporter of the Seventh Judicial Circuit in and for Volusia County, Florida for a cost deposit a prerequisite for Petitioner obtaining a trial transcript for the purpose of prosecuting his appeal a denial of due process and equal protection where there is an affirmative showing that Petitioner is financially incapable and unable to procure the required monies for deposit.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment Five

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in

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actual service time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Amendment Fourteen

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The events, sufficient for an understanding of the facts leading to the Petitioner's Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal and its subsequent denial, are as follows:

Petitioner was represented during all preliminary motions prior to trial by John Spencer Robinson, of the firm of Robinson, Whitson and Lauderback, 123 Gardiner Court, Daytona Beach, Florida, 32015, who also represented Petitioner at his original trial which trial ended in a mistrial May 14, 1973 and Petitioner's second trial in June whereupon Petitioner was found not guilty as to the murder of Forest L. Babcock but guilty as charged on the assault with intent to commit a

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felony on Floridene Cueni. Mr. Robinson also represented Petitioner in filing his Notice of Appeal.

Petitioner then hired the undersigned attorney to represent him in prosecuting his appeal from said conviction, which attorney filed his Notice of Appearance on November 19, 1973.

Petitioner then filed a Motion for Extension of Time for Filing Assignment of Error and Transcript of Proceedings in order to allow the court reporter enough time within which to prepare the said transcript. After filing the Directions to the Clerk and Designations to the Court Reporter, Petitioner through his undersigned attorney received a letter from the Official Court Reporter of the Seventh Judicial Circuit in and for Volusia County, Florida stating that they required a $3,500.00 deposit before they would begin the transcription of the trial proceedings. Said letter was dated February 11, 1974. On February 27, 1974, Petitioner filed in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida his Motion for Declaration of Indigence of Defendant and for Extension of Time for Filing Record and Briefs, which Motion was denied by order of the Honorable J. Robert Durden, April 3, 1974, summarily and without the taking of testimony.

On May 14, 1974, Petitioner filed his Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal and for Extension of Time for Filing Record and Briefs, in the District Court of Appeal, First District, State of Florida.

Attached to Petitioner's Amended Motion for Declaration of Indigence were the following exhibits:

(1) Exhibit "C"-letter from the office of the Official Court Reporter of the Seventh Judicial Circuit in and for Volusia County, Florida demanding a deposit of $3,500.00 before transcribing the court proceedings.

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(2) Exhibit "D"-affidavit of Anna Melton, Deputy Official Court Reporter, stating that the appeal cannot proceed without the transcribing of the notes of the trial in which the sum of $3,500.00 must be deposited.

(3) Exhibit "B"-letter from Petitioner stating his trying to raise money for transcript.

(4) Exhibit "E"-letter from Petitioner stating he can only pay $50.00 per week.

(5) Exhibit "H"-letter from Petitioner stating what Petitioner's salary is and monthly expenses are.

(6) Exhibit "J"-affidavit by Petitioner stating that he doesn't own real property.

On May 15, 1974, an Order was entered by the District Court of Appeal, First District, State of Florida, granting Appellant an extension of time for filing record on appeal and briefs.

On July 18, 1974, the District Court of Appeal, First District, State of Florida entered its opinion denying Appellant's Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal. Petition for Rehearing was denied by the Appellate Court September 10, 1974. Petitioner then petitioned for Writ of Certiorari in the Supreme Court of Florida which petition was denied March 13, 1975.

SUMMARY OF ARGUMENT

The failure of the District Court of Appeal, First District to grant Petitioner's Amended Motion for Transcript denied the Petitioner due process and equal protection under the Fifth and Fourteenth Amendments by the State denying Petitioner a trial transcript in prosecuting his appeal when Petitioner if financially

unable to provide the necessary monies for a cost deposit as demanded and required by the State of Florida through the office of the Official Court Reporter of the Seventh Judicial Circuit in and for Volusia County, Florida.

The denial of transcript to Petitioner merely because he lacks sufficient monies to pay the required deposit of $3,500.00 demanded by the State of Florida through the Official Court Reporter denies Petitioner due process and equal protection under the Fifth and Fourteenth Amendments of the Federal Constitution. (see Griffin v. Illinois 351 U.S. 12)

Petitioner's attorney representing Petitioner on appeal did not assist Petitioner or participate in any of Petitioner's trials therefore; Petitioner filed a Motion for Extension of Time for filing Assignments of Error in order that Petitioner could examine trial transcript to determine all Assignments of Error applicable for his appeal before filing the same. Although, Petitioner subsequently filed an Assignments of Error without benefit of transcript, Petitioner did not waive his right to fully examine the transcript under Petitioner's original motion in order to determine additional errors. Without the benefit of transcript, Petitioner is unable to fully examine the same and file all applicable Assignments of Error; however, had the Petitioner the financial means to meet the prerequisite requirements for obtaining a trial transcript for his appeal, to-wit; $3,500.00 deposit demanded by the State of Florida through the Official Court Reporter of the Seventh Judicial Circuit, in and for Volusia County, Florida, Petitioner would then have had the benefit of a trial transcript before filing any and/or additional Assignments of Error. The effect of the State of Florida

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demanding Petitioner to deposit $3,500.00 before he can obtain a trial transcript, in effect, precludes and denies Petitioner the benefit of a trial transcript where there has been an affirmative showing that Petitioner is financially unable to pay the deposit.

The inability of the Petitioner to make the necessary deposit demanded by the State of Florida to purchase the transcript of proceedings denies the constitutional right guaranteed under the Fifth and Fourteenth Amendments in that it allows convicted defendants to have the appellate review only if they have sufficient funds to meet the financial requirements of the State of Florida and/or their official agents.

ARGUMENT

IS A DEMAND BY AN AGENT OF THE STATE OF FLORIDA, TO-WIT; THE OFFICIAL COURT REPORTER OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA FOR A COST DEPOSIT AS A PREREQUISITE FOR PETITIONER OBTAINING A TRIAL TRANSCRIPT FOR THE PURPOSE OF PROSECUTING HIS APPEAL A DENIAL OF DUE PROCESS AND EQUAL PROTECTION WHERE THERE IS AN AFFIRMATIVE SHOWING THAT PETITIONER IS FINANCIALLY INCAPABLE AND UNABLE TO PROCURE THE REQUIRED MONIES FOR DEPOSIT.

The failure of the District Court of Appeal, First District of Florida to grant Petitioner's Amended Motion for Transcript where there has been an affirmative showing that Petitioner is financially in-

capable and unable to meet the demands of the State of Florida for a cost deposit violates the Fifth and Fourteenth Amendments of due process and equal protection for the following reasons:

An indigent appellant is entitled to a free transcript of his trial testimony for purposes of appeal. (See Griffin v. Illinois, 351 U.S. 12, 1956). The determination of whether Petitioner is indigent is considered in light of all the circumstances regarding Petitioner's financial condition. It has been adopted by the Attorney General of the United States that any point of the judicial process a defendant is unable to meet the financial burden required by him, then for that purpose the defendant is considered indigent.

The Petitioner is represented by a different attorney for appeal than he was represented at all pre-trial and trial proceedings; therefore, Petitioner requires a trial transcript in order to appropriately set forth all Assignments of Error relevant to Petitioner's appellate review. In addition, Petitioner set forth, by the aforementioned exhibits attached to his Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal, an affirmative showing that Petitioner is financially unable to acquire the necessary monies for deposit demanded by the Official Court Reporter although such an affirmative showing has been held not always necessary. (see Butt v. North Carolina 404 U.S. 226, 1971)

Secondly, Petitioner, filed a Motion for Extension of Time for Filing Assignments of Error until a transcript of proceedings could be obtained, said transcript being vital before all relevant Assignments of Error could be filed. Petitioner did file one Assignments of Error relating to the sentence imposed on Petitioner by trial

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judge. (see U.S. v. Malcolm, 422 F.2d 809, 1970; U.S. v. Watson, 450 F.2d 495 1971; U.S. v. Daniels, 446 F.2d 967, 1971; U.S. v. Freeman, 462 F.2d 290 1972; Woosley v. U.S., 478 F.2d 139, 1974). The above Assignments of Error was the only Assignments of Error Petitioner could file without the benefit of a trial transcript. And, even though Petitioner filed that Assignments of Error, Petitioner did not waive his right to file additional Assignments of Error upon given an opportunity to review his trial transcript. In the same token, had the Petitioner filed several Assignments of Error without the benefit of a trial transcript the court could neither review the merits of Petitioner's contentions of error or rule on the same without benefit of transcript. (see Draper v. Washington, 372 U.S. 487, 1962).

CONCLUSION

The order of the District Court of Appeal, First District, State of Florida, denying Petitioner's Amended Motion for Declaration of Indigence of Appellant to Provide Transcript for Appeal should be reversed for the foregoing reasons.

Respectfully submitted,

RICHARD A. KRAUSE
404 South Atlantic Avenue
Ormond Beach, Florida 32074
Attorney for Petitioner

APPENDIX A

CIRC' OURT MINUTE BOOK 114 PAGE 679.

Form No. 1

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA.

Fall Term, 1973.

THE STATE OF FLORIDA

Case No. 73-124-B

VS.

ERNEST CUENI, JR:
Defendant.

JUDGMENT AND SENTENCE

You, ERNEST CUENI, JR., having been duly [redacted] tried and found guilty of the crime of Aggravated Assault under Count II of an INFORMATION charging you with the crime of Assault with intent to commit a felony, to-wit: Murder in the First Degree, the Court now adjudges you to be GUILTY of that offense. What have you to say why the sentence of the law should not be pronounced upon you? Saying nothing: It is the sentence of the law and such is the judgment of the Court that you, ERNEST CUENI, JR., be imprisoned by confinement and committed to the custody of the Division of Corrections for a term of Five (5) Years less time served in the Volusia County Jail (178 days)

and the Sheriff of Volusia County, Florida, is hereby ordered and directed to deliver you to the Division of Corrections of the State of Florida, with a copy of this sentence, forthwith.

DONE AND ORDERED in Open Court, at Daytona Beach, Volusia County, Florida, this 15th day of October, A.D. 1973.

[redacted], Circuit Judge

Filed in Open Court and Recorded in Circuit Court Minute Book No. 114 page 679. This 15 day of October, 1973.

V. Y. Smith, Clerk of the Circuit Court
Seventh Judicial Circuit, In and For
Volusia County, Florida

By: W. J. Rose Deputy Clerk.

EXHIBIT A-2

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1974.

ERNEST E. CUENI, JR., Appellant,	:	NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.
v.	:	
STATE OF FLORIDA, Appellee.	:	CASE NO. U-302

Opinion filed July 18, 1974.

An Appeal from the Circuit Court for Volusia County.

Richard A. Krause; John Spencer Robinson of Robinson, Whitson, Moore & Lauderback, for Appellant.

Robert L. Shevin, Attorney General; Richard W. Prospect, Assistant Attorney General; and Horace Smith, Jr., for Appellee.

SPECTOR, Acting Chief Judge.

The appellant has filed in this court a motion whereby he asks that he be declared an indigent for the purposes of obtaining a free transcript of his trial to be used by him in the prosecution of his appeal from his

conviction of aggravated assault and five-year sentence imposed thereon.

The exhibits and affidavits attached to the motion and the averments in the motion reveal that appellant was represented by privately retained counsel at trial and said counsel is also representing on appeal. Upon taking a timely appeal, a sole assignment of error was timely filed as follows:

> "The Trial Court abused its discretion in sentencing the defendant to the maximum sentence. Said Sentence (sic) was in direct and total conflict with the recommendation of the Probation and Parole Commission as evident by the Pre-sentence Investigation Report."

Prior to the filing of this motion in the appellate court, the appellant filed a similar motion in the trial court. A hearing was held and upon considering the evidence submitted, as well as argument of counsel, the court held the appellant is regularly employed, the owner of property and had retained private counsel. Upon such finding the court ruled appellant not indigent under the laws pertaining to entitlement to publicly furnished trial transcripts for appeal purposes.

After ruling that appellant is not legally indigent, the court further held in its order that appellant is not entitled to a full transcript of the trial because his assignment of error did not attack the sufficiency of the evidence or any error made during the course of the trial. The court further held that the desired transcript of trial testimony would not be pertinent to the determination of whether the trial court abused its discretion in the sentencing of the defendant.

On the basis of the record, we cannot say that the trial court erred in holding appellant to be a

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nonindigent for trial transcript purposes when the record reveals that his net earnings are some $985.00 monthly. While the record also shows that all or substantially all of such earnings are expended on necessities, that seems to be a plight suffered by citizens making twice as much as appellant. However, though we cannot fault the trial judge on ruling on the indigency issue, we do not rest our decision of affirmance on that issue, preferring to explore that question in another case where a determination of indigency is absolutely necessary to reaching a decision.

Rather, we go to the bare question of appellant's entitlement to a trial transcript – even assuming his indigency – when the only assignment of error raised contends the trial court abused his discretion in imposing the maximum sentence allowed by law.

It is clear that since Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, an indigent appellant is entitled to a free transcript of his trial testimony for purposes of an appeal if a non-indigent person may obtain a transcript for an appeal simply by paying for it. The Griffin case simply places the indigent defendant seeking appellate review of his conviction in the same position before the courts as that occupied by a more solvent defendant. In Eskridge v. Washington, 357 U.S. 214, 2 L.Ed.2d 1269, the court also dealt with the constitutional rights of indigents to free transcripts on appeal. The Eskridge decision reaffirmed the Griffin principle that a destitute defendant must be afforded as adequate an appellate review as defendants who have money enough to buy transcripts. "[A] state denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate review except

those who cannot afford to pay for the records of their trials." Eskridge, 357 U.S. at 216.

In Eskridge, the court considered and rejected the validity of Washington's longstanding procedure whereby an indigent defendant would receive a stenographic transcript at public expense only if, in the opinion of the trial judge, "justice was thereby promoted". Id. at 215. The Supreme Court rejected the validity of that test of transcript entitlement saying it could not serve as an adequate substitute for the transcript itself. After Eskridge, the Washington Supreme Court adopted a new standard by which the trial judge would determine whether an indigent is entitled to a free transcript. The validity of the new standards come up for consideration by the Supreme Court in Draper v. Washington, 372 U.S. 487, 9 L.Ed.2d 899.

Draper was found guilty of robbery by a jury and thereafter filed a pro se notice of appeal and motion requesting the trial judge to order preparation of a free transcript of the record. The request for a free transcript asserted Draper's indigency and further asserted various allegations of error in the trial relating to admission and sufficiency of evidence. The motion for transcript was heard by the same judge who presided over the trial, and he denied it on the ground that Draper's guilt was established by overwhelming evidence and that the assignments of error were frivolous. Ultimately the question of the validity of such grounds as the basis upon which the trial judge denied Draper's motion for a free transcript was considered by the United States Supreme Court. That court held that the standards by which Draper's entitlement to a transcript were to be determined were

constitutionally impermissible. The procedure failed to provide the indigent as adequate and effective an appellate review as that given appellants with funds. Thus the court held that without the transcript, or some acceptable substitute for it, an appellate court could not review the merits of Draper's contention of errors during trial, the existence of which, if any, would be reflected in the trial record.

However, the Draper court went further and held that an indigent is not always entitled to a free transcript. Such entitlement is limited to instances where the transcript or substitute therefor is necessary to ascertain whether the assigned errors occurred. In Draper, 372 U.S. at 495, the court stated:

> "... that a State need not purchase a stenographer's transcript in every case where a defendant cannot buy it, 351 U.S. at 20. Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or a bystander's bill of exceptions might all be adequate substitutes equally as good as a transcript."

Following the above excerpt, the court continued with a further declaration which we deem particularly applicable to the facts of the instant case wherein no assignments of error were filed which inher in the trial itself, but rather it concerns only the contention that the trial judge abused his discretion in imposing the maximum sentence permitted by statute for the offense involved.

The court continued at page 495:

"Moreover, part or all of the stenographic transcript in certian cases will not be germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances. If, for instance, the points urged relate only to the validity of the statute or the sufficiency of the indictment upon which conviction was predicated, the transcript is irrelevant and need not be provided. If the assignments of error go only to rulings on evidence or to its sufficiency, the transcript provided might well be limited to the portions relevant to such issues. Even as to this kind of issue, however it is unnecessary to afford a record of the proceedings pertaining to an alleged failure of proof on a point which is irrelevant as a matter of law to the elements of the crime for which the defendant has been convicted. In the examples given, the fact that an appellant with funds may choose to waste his money by unnecessarily including in the record all of the transcript does not mean that the State must waste its funds by providing what is unnecessary for adequate appellate review. . . ."

The views expressed in Draper, supra, were reaffirmed by the Supreme Court in Mayer v. City of Chicago, 404 U.S. 200, 92S. Ct. 410 (1971) in a case challenging the denial of a transcript or a suitable substitute at public cost. Once again the court held that where the errors sought to be reviewed inhered in the trial testimony a transcript must be provided to an indigent even in a non-felony case. Nonetheless, Chief Justice Burger concurred specially and observed that counsel for a party should decline to unnecessarily require a free transcript which is not needed by the reviewing court to consider the assigned errors. The Chief Justice stated, at 404 U.S. 200:

> "Every busy court is plagued with excessive demands for free transcripts in criminal cases. My own experience over the years indicates that privately employed counsel are usually spartan in their demands because the client must pay his own costs. Unfortunately one consequence of the advent of the Criminal Justice Act and state counterparts is that when costs are paid by the public, counsel are sometimes profligate in their demands, or yield their professional judgment to the client's desires. This is more than a matter of costs. An affluent society ought not be miserly in support of justice, for economy is not an objective of the system; the real vice is the resulting delay in securing transcripts and hence determining the appeal. When excessive demands are made by an appellant in order to postpone the day when the appeal is finally determined, because, for example, he is at liberty pending appeal, a lawyer who cooperates is guilty of unprofessional conduct."

The remarks of the Chief Justice are particularly worthy of consideration today when all participants in the judicial administration system are straining to devise means whereby the capacity of court reporters can be stretched to meet an ever expanding demand for transcription services. It is simply not a proper expenditure of public funds to pay for a transcript of testimony that has no bearing on the issues presented to the appellate court as contended grounds for reversal. In this case the juridically useless transcript of testimony would cost some $3,500.00. In my view the Board of County Commissioners should not be required by the courts to levy and collect taxes for such needless expenditures.

A review of the foregoing excerpts from Draper and Mayer makes it clear that while the indigent is entitled

to a free transcript so that his conviction can be properly considered by an appellate court, it must first appear that a transcript of the evidence is necessary in order that the appellate court can consider the errors raised. Thus, the entitlement to a free transcript must be ascertained in the context of the substantive law surrounding the assignment of errors raised.

It is the well settled law of this jurisdiction that a sentence which is within the lawful range established by the legislature for a given offense is not subject to appellate review. Shellman v. State, 222 So.2d 789 and Blackman v. State, 265 So.2d 734.

In the case at bar the only error raised is whether the trial court abused its discretion in imposing the maximum sentence allowed by law. The trial court correctly ruled that the trial testimony was irrelevant to the sole assignment and therefore properly denied appellant's motion for a trial transcript.

Accordingly the motion is denied.

SPECTOR, Acting Chief Judge, JOHNSON and BOYER, JJ., CONCUR.

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Supreme Court of Florida

JANUARY TERM, A. D. 1975

THURSDAY, MARCH 13, 1975

ERNEST E. CUENI, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 46,311

DISTRICT COURT OF APPEAL,
FIRST DISTRICT
U-302

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, McCAIN, OVERTON and ENGLAND, JJ., concur

ADKINS, C.J., dissents

Y
CC: Hon. Raymond E. Rhodes, Clerk
Hon. V. Y. Smith, Clerk with
copy for the appropriate judge

Hon. Richard A. Krause
Hon. Richard W. Prospect

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

EXHIBIT A-7